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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/776,162	02/02/2001	Frank Beurskens	1148	5528

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BRETT J. TROUT, PC
516 WALNUT
DES MOINES, IA 50309

EXAMINER

NGUYEN, NGA B

ART UNIT	PAPER NUMBER
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3628

DATE MAILED: 04/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/776,162

Applicant(s)

BEURSKENS, FRANK

Examiner

Nga B. Nguyen

Art Unit

3628

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 February 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 9/4/01.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. This Office Action is in response to the communication filed on February 2, 2001, which paper has been placed of record in the file.
2. Claims 1-28 are pending in this application.

Information Disclosure Statement

3. The information disclosure statement (IDS) submitted on September 4, 2001 is being considered by the examiner.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 1-4 and 9-21 are rejected under 35 U.S.C 101 because the claimed invention is directed to non-statutory subject matter.

The claims, as presently claimed and best understood were reconsidered in light of the "Examination Guidelines for Computer-Related Inventions" and were found to be non-statutory. Discussion of the analysis of the claims under the guidelines follows.

As to claims 1-4 and 9-21, the claimed invention is not implemented on a specific apparatus, therefore, the invention is not directed to the technological arts. To be statutory, the utility of an invention must be within the technological arts. The definition of "technology" is the "application of science and engineering to the development of machines and procedures in order to enhance or improve human conditions, or at least

to improve human efficiency in some respect." (Computer Dictionary 384 (Microsoft Press, 2d ed. 1994)). When one looks to the present specification to determine what the applicant has invented, the invention appears to be implemented on the computer. Thus, it is clear that the claimed invention are intended to be directed to the abstract method apart from the apparatus for performing the method.

Therefore, claims 1-4 and 9-21 are non-statutory, because they are directed solely to the abstract method apart from the apparatus without practical application in the technological arts.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1-19, 21-24, and 26-28 are rejected under 35 U.S.C. 102(e) as being anticipated by Grosh et al (hereinafter Grosh), U.S. Patent No. 6,195,646.

Regarding to claim 1, Grosh discloses a method of pricing a commodity comprising:

(a) selecting a predetermined market factor selected from the group consisting of a predetermined time factor, a predetermined price factor, a predetermined trend factor,

a predetermined market status factor, and a predetermined market control factor (figures 4-5 and column 7, lines 27-50; VOLUME, TIMELY, PRIOR, DELIVERY, and DEMAND factors);

(b) determining at a first time period a first market condition selected from the group consisting of a first time condition, a first price condition, a first trend condition, a first market status condition, and a first market control condition (figure 3 and column 7, lines 3-27; e.g. using normal model);

(c) providing a formula capable of comparing said predetermined market factor to said first market condition to determine the existence of a favorable pricing condition for a first portion of the commodity (column 9, line 60-column 11, line 28; e.g. applying the everyday pricing model 20E);

(d) applying said formula to said predetermined market factor and said first market condition to determine the existence of a first favorable pricing condition (column 9, line 60-column 11, line 28; e.g. applying the everyday pricing model 20E);

(e) pricing a first portion of the commodity when said application of said formula to said predetermined market factor and said first market condition indicates the existence of said first favorable pricing condition (column 9, line 60-column 11, line 28; e.g. applying the everyday pricing model 20E);

(f) determining at a second time period a second market condition selected from the group consisting of a second time condition, a second price condition, a second trend condition, a second market status condition and a second market control

condition (figures 2-3 and column 6, lines 20-35; e.g. applying weekend pricing model 20C);

(g) applying said formula to said predetermined market factor and said second market condition to determine the existence of a second favorable pricing condition (figures 2-3 and column 6, lines 20-35; e.g. applying weekend pricing model 20C and column 9, line 60-column 11, line 28); and

(h) pricing a second portion of the commodity when said application of said formula to said predetermined market factor and said second market condition indicates the existence of said second favorable pricing condition (figures 2-3 and column 6, lines 20-35; e.g. applying weekend pricing model 20C and column 9, line 60-column 11, line 28).

Regarding to claim 2, Grosh further discloses receiving information from a supplier of the commodity information relating to a specific type and amount of the commodity which said supplier is willing to supply (column 7, lines 7, lines 28-49; the supplier set a plurality of the dimensional aspects and factors).

Regarding to claim 3, Grosh further discloses generating a contract for pricing of said specific type and amount of the commodity by said supplier (column 8, lines 22-67; the purchaser generates a contract for pricing).

Regarding to claim 4, Grosh further discloses generating a contract for the pricing of said specific type and amount of the commodity according to the formula (column 8, lines 22-67).

Regarding to claim 5, Grosh further discloses wherein said information is received from said supplier across a global computer network (column 3, lines 35-45).

Regarding to claim 6, Grosh further discloses automatically pricing said first portion of the commodity across a computer network when said application of said formula to said predetermined market factor and said first market condition indicates the existence of said first favorable pricing condition (column 14, line 60-column 15, lines 10; dynamically a plurality of dimensions to each of pricing models done automatically by computer program code).

Regarding to claim 7, Grosh further discloses wherein said computer network is a global computer network (column 3, lines 35-45; the Internet).

Regarding to claim 8, Grosh further discloses: (a) providing a computer with a database; (b) storing said predetermined market factor and said formula on said database determining at least ten time periods and related market conditions selected from the group consisting of a related time condition, a related price condition, a related trend condition, a related market status condition and a related market control condition; (d) applying said computer to said predetermined market factor and said related market conditions to determine the existence of favorable pricing conditions, and pricing quantities of the commodity when said computer indicates the existence of said favorable pricing conditions (figure 1 and column 3, lines 35-45; server computers 14).

Regarding to claim 9, Grosh further discloses wherein said predetermined market factor is a predetermined time factor, wherein said first market condition is a first time condition, wherein said second market condition is a second time condition, further

comprising pricing a first quantity of the commodity when said first market condition is met, and pricing a second quantity of the commodity when said second market condition is met (figure 5; Timely and Volume factors).

Regarding to claim 10, Grosh further discloses wherein said first time condition is a trading day, and wherein said second time condition is the next consecutive trading day, and wherein said first quantity of the commodity is equal to said second quantity of the commodity (figure 5; applying the everyday pricing model 20E).

Regarding to claim 11, Grosh further discloses wherein said first time condition is a trading day, and wherein said second time condition is the next consecutive trading day, and wherein said first quantity of the commodity is different than said second quantity of the commodity (figure 5; applying the everyday pricing model 20E).

Regarding to claim 12, Grosh further discloses wherein said predetermined market factor is a predetermined trend factor comprising historical prices correlated with predetermined periods of time (column 9, lines 28-50).

Regarding to claim 13, Grosh further discloses pricing a larger portion of the commodity during a first time period associated with historically higher prices, and a smaller portion of the commodity during a second time period associated with historically lower prices (column 10, lines 33-50).

Regarding to claims 14 and 15, Grosh further discloses wherein said predetermined market factor is a predetermined trend factor comprising an algorithm capable of identifying said market price trends and identifying variances from said market price trends. (column 4, lines 10-21).

Regarding to claim 16, Grosh further discloses wherein said first favorable pricing condition is a variance from said market price trends greater than a predetermined amount (column 10, lines 7-50).

Regarding to claim 17, Grosh further discloses wherein said first favorable pricing condition is a failure of an upward market price trend to continue to grow by a predetermined factor (column 10, lines 7-50).

Regarding to claims 18 and 19, Grosh further discloses wherein said predetermined market factor is a predetermined market status factor related to the volatility of a market and wherein said first favorable pricing condition is a condition wherein said volatility of said market exceeds a predetermined factor (column 7, lines 62-67).

Claims 21-24 contain similar limitations found in claims 1, 2, 4, 5 above, therefore, are rejected by the same rationale.

Regarding to claims 26 and 27, Grosh further discloses wherein said time periods are at least five consecutive trading days of a commodity market and pricing said portions of the commodity on at least five different days (figure 5; applying the everyday pricing model 20E).

Regarding to claim 28, Grosh discloses a system for contracting for the pricing of a commodity over a network comprising: (a) a server; (b) a remote terminal; (c) a communication link between said server and said remote terminal; (d) means coupled to said server for receiving from a supplier, across said communication link, information relating to a specific type and quantity of the commodity (figure 1 and column 3, lines

35-45; server computers 14, remote terminals 10 and 12; transmission wires 12); (e)-(i) contain similar limitations found in claim 1 above.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 20 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grosh et al (hereinafter Grosh), U.S. Patent No. 6,195,646.

Regarding to claim 20, Grosh does not disclose wherein said predetermined market factor is a predetermined market control factor related to a global climate in a predetermined geographic region at a predetermined time. However, the market control factor related to a global climate in a predetermined geographic region is well known in the art. Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify Grosh's to include the climate factor for the purpose of providing more efficiency for determining the price of a commodity.

Regarding to claim 25, Grosh does not disclose executing said contract with digital signatures. However, the use of digital signatures in executing contract is well known in the art. Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify Grosh's to include the feature above for the purpose of enhancing the security in executing a contract.

Conclusion

10. Claims **1-28** are rejected.

11. The prior arts made of record and not relied upon is considered pertinent to applicant's disclosure:

Meada et al. (US 5,377,095) disclose a merchandise analysis system with sales data table and various functions for predicting the sale by item.

Lee et al. (US 5,712,985) disclose a system and method for estimating business demand based on business influences.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner Nga B. Nguyen whose telephone number is (571) 272-6796. The examiner can normally be reached on Monday-Thursday from 9:00AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hyung S. Sough can be reached on (571) 272-6799.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 306-1113.

13. Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

C/o Technology Center 3600

Washington, DC 20231

Application/Control Number: 09/776,162

Page 11

Art Unit: 3628

Or faxed to:

(703) 872-9306 (for formal communication intended for entry),

or

(703) 308-3691 (for informal or draft communication, please label

"PROPOSED" or "DRAFT").

Hand-delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive, Arlington, VA, Seventh Floor (Receptionist).

Nga B. Nguyen

A handwritten signature in cursive script that reads "Nga Nguyen".

March 15, 2005